

facilitate the design and award of three separate, unique contingency contracts to provide 2-hour response flood-fighting services extendible for a five year period. As the Deputy, he also completed the staffing plan for the contracting division and coordinated the Commercial Activities (OMB A76) study effort on the Director of Public Works at Fort Riley. To ensure that the Kansas City District was taking advantage of and complying with the many Department of Defense acquisition reform initiatives, he developed the Acquisition Reform Team concept to keep the contract specialists informed on a monthly basis. For example, as a first topic he coordinated a demonstration on electronic source selection process, a technique that could reduce the costs of future source selections by 30 to 50 percent. CPT Riordan lead the Acquisition Reform Day training in 1997 and oversaw the processing of 53 actions through Electronic Data Interchange (EDI), a solely electronic commerce federal initiative.

In an effort to pre-empt potential problems on the award of the new United State Disciplinary Barracks at Fort Leavenworth, he lead the effort to assist small businesses in receiving plans and specifications in a timely manner by providing a list of printing firms on the corresponding compact disc.

CPT Riordan was responsible for the award of the Fort Riley Barracks project (\$31 million) which was unsuccessfully attempted in 1996. This project included five barracks buildings, two soldier community buildings, and one company operations building. The award of this project made Department of the Army "green" under military construction for FY97. In addition to this project, CPT Riordan assisted in negotiating and awarding the indefinite-delivery, architect-engineer contract for master planning at Fort Riley; prepared, briefed, and received approval to obtain a Total Environmental Restoration Contract (TERC) for the boundaries of the Northwestern Division, a \$270 million contract which is the largest contract in the Kansas City District to date.

CPT Riordan is a member of the National Contract Management Association (NCMA) and will take the Contract Associate Certified Manager (CACM) exam in November; will receive his contracting officer warrant for actions under \$10 million in December 1997. He organized the kids events at the Annual District Picnic and supported the Kansas City Corporate Challenge by organizing the Tug-o-War team to achieve 5th place and ultimately to take the Gold in Division C (see article). Finally, CPT Riordan's average APFT score in 1997 was 298 points.

Duty: Volunteered to stay in Bosnia so that six other USACE officers could return to their families for Christmas.

Honor: Served as a member of the Knights of Columbus.

Country: Volunteered with the Cub Scouts of America; served as a support couple for Catholic Engaged Enco unter Retreats; and maintained a relationship with former Little Brother from Big Brothers and Big Sisters Association.

RECENT AUDIT FINDING

Corps contracting offices are not conducting a thorough market research in their efforts to acquire contractor support services.

FAR 10.001 states that "agencies shall conduct market research appropriate to the circumstances before developing new requirements documents for an acquisition by that agency." It goes on to say techniques for conducting market research may include "querying government data bases that provide information relevant to agency acquisitions ... and obtaining source lists of similar items from other contracting offices and agencies."

The Information Technology Management Reform Act (ITMRA) authorizes the Office of Management and Budget (OMB) to designate "one or more

agency heads as executive agents for Governmentwide acquisitions of information technology." Pursuant to that authority, OMB designated the General Services Administration (GSA) as an executive agent, thereby exempting any interagency dealings with GSA from the requirements imposed by the Economy Act. That Act still permits requiring agencies to place orders for goods and services with other agencies, but only after following specific rules. The Army Federal Acquisition Regulation Supplement (AFARS) provides just that in subpart 17.5. It states that proposed interagency acquisitions would necessitate the preparation of a written determination and finding by the requiring activity, review of same by legal counsel and approval by "a level no lower than a SES/General Officer who is a Commander/Director of the requiring activity."

OMB memorandum M-97-07, Subject: Multi agency Contracts under the Information Technology Management Reform Act of 1996, 26 February 1997, provided further guidance on this matter. The memo authorized other (than GSA) agencies to enter into Multi agency contracts for information technology (IT) and promoted their use, advocating that the aggregation of agency demand would encourage contractors "to offer the best possible prices, and serve to reduce the overhead associated with multiple acquisitions, particularly by smaller agencies."

The Office of the Assistant Secretary, Research, Development and Acquisition, Department of the Army, has also discussed the use of these contracts in memorandum SARD-PP, Subject: Indefinite Delivery (ID) Contracts, 22 September 1997. That memo states the "the Army shall make the maximum practicable and prudent use of ID contracts, both as a user of non-Army instruments and in the establishing and awarding of such instruments." It goes on to say that Army offices shall "not award a new, single purpose contract if there is an existing ID contract, Army or non-Army, that will satisfy the requirement and represents the

best business arrangement for the Army..." It further reinforces the elite status of GSA, stating that Economy Act requirements do not apply when requirements with funds are sent to GSA for IT.

Every subordinate command visited during the course of our inspection shared a common need for contractor support in performing their information technology function. Those needs would typically be categorized as facilities management/maintenance services and include network management and maintenance, data entry, microcomputer and end user support and staffing the help desk. The Corps offices would either contract for those services directly or enter into an interagency agreement with GSA for the providing of same.

The most popular of the various Governmentwide Agency contracts (GWACS) offered by GSA are those awarded under the Federal Information Systems Support Program (FISSP). That program is designed to provide IT services to client agencies on a *negotiable* fee for service basis. GSA will always assign a project manager to the client office/agency using their contract(s). That project manager will offer to provide the client with a variety of services, to include writing the statement of work, developing a cost estimate and negotiating a firm fixed/ceiling price with the contractor. The cognizant GSA regional office would assume financial management of the contract, a responsibility that would entail reviewing and certifying contractor invoices for payment and making the appropriate payments. The client office's representative would be responsible for determining acceptability of contractor services.

Most of the inspected offices relied upon GSA to provide them with contractor support and many of the accompanying interagency agreements were entered into prior to the passage of the ITMRA. The clients were comfortable with the arrangement and saw no need to look elsewhere in view of GSA's "executive agent" status. They were satisfied

with the quality of the services received and felt strongly that the rates negotiated for contractor services were unbeatable. Those opinions were reinforced by a limited market research that often times was no more extensive than placing phone calls to area businesses, inquiring about availability of resources and requesting quotes. The possibility that better deals were obtainable from other providers of GWACs was never a consideration.

A few offices chose to acquire contractor services directly, awarding contracts to predominantly small businesses. Their choices were made after soliciting best offers from those businesses and comparing same with what GSA had in place for that locale. The accompanying documentation supported their decisions, as the majority of the rates bettered what GSA had negotiated for the same/similar skills, sometimes by amounts exceeding \$10.00/hr. It also served to refute any unqualified claims made by GSA-serviced offices about the futility of market research.

The individuals involved in making the above decisions weren't completely without fault, however. They were queried about researching the GWAC market outside of GSA. They had not done so, owing to either concerns over the restrictions imposed by the Economy Act or ignorance of the GWAC market. Concerns over the Economy Act dealt specifically with the review and approval requirements (i.e., approval at a level no lower than a SES/General Officer). A strict reading of the AFARS would necessitate the forwarding of all district command "determinations and findings" to the major subordinate command for approval. Many viewed that stipulation as a disincentive to look to other agencies.

The number of agencies involved in Multi agency contracts has grown considerably in recent years. GSA freely admits that it receives stiff competition from agencies such as the Department of Transportation (the Information Technology Omnibus Procurement), the National Institute of

Health (the Chief Information Officer Solutions and Partners contract) and the Defense Information Systems Agency (the Defense Enterprise Integration Services - 11 contract). Further information on those GWACs available for use by all Federal agencies can be obtained by visiting the Defense Information Systems Agency website at <http://www.disa.mil/D7>.

TRAIL INSIGHTS IN CORPS CONTRACTING

Trial Attorney's Note: This case illustrates the relationship between the VEO clause and the Differing Site Condition clause. Notwithstanding the VEO clause, Contractor entitled to unit price increase for overrun work under the Differing Site Condition clause where the quantity of work differed materially from the estimate in the contract.

Appeal of Met-Pro Corp., Under Contract No. DACA38-92-C-0044, ASBCA No. 49694 (Vicksburg District)

The District awarded the subject contract to Met-Pro for the removal and clean-up of petroleum storage tanks at the former Greenville Air Force Base, Mississippi. The contract contained three line items: CLIN 1 was for removal of the tanks, CLIN 2 was for excavation and disposal of petroleum contaminated soil, and CLIN 3 required the excavation and removal of hazardous contaminated soil at the site. The District considered excavation of petroleum contaminated soil under CLIN 2 as incidental to tank removal under CLIN 1. The District estimated 150 cubic yards (CY) for sub line item 2A, and 250 CY sub line item 2B (for excavation and disposal exceeding sub line item 2A). Met-Pro bid \$40/CY for both sub line items. The IFB contained boring logs which showed that the petroleum contamination in the soil was low enough to allow the soil to be used as backfill. The contract also contained the Variations In Estimated